

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TC-210632
PENALTY AMOUNT: \$100

CWA, Inc.
1416 Whitehorn St.
Ferndale, WA 98248

The Washington Utilities and Transportation Commission (Commission) believes that CWA, Inc.,¹ (CWA or Company) violated Washington Administrative Code (WAC) 480-30-221, Vehicle and Driver Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 383 – Commercial Driver’s License Standards; Requirements and Penalties.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day’s continuance is considered a separate and distinct violation.

On August 11, 2021, Commission Motor Carrier Investigator Michael Dotson completed a destination check at the SeaTac Airport bus holding lot and documented the following violation:

- **One violation of 49 CFR § 383.23(a)(2) – Operating a commercial motor vehicle (CMV) without a commercial driver’s license (CDL).** CWA allowed driver Felicia Mowatt to operate a commercial motor vehicle without a valid commercial driver license. The driver was placed out-of-service.

The Commission considered the following factors in determining the appropriate penalty for this violation:

1. **How serious or harmful the violation is to the public.** The violation noted is serious and potentially harmful to the public. Auto transportation companies that use drivers without valid commercial driver licenses put their customers and the traveling public at risk. This violation presents serious safety concerns.
2. **Whether the violation was intentional.** Considerations include:
 - Whether the Company ignored Staff’s previous technical assistance; and
 - Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

On March 7, 2012, the Commission received the Company’s application to extend its existing auto transportation authority. In the application, Richard Johnson, owner of

¹ CWA, Inc., d/b/a Central Washington Airporter; Airporter Shuttle; Travel Washington Grape Line; Travel Washington Gold Line; Bellair Charters; Hesselgrave South.

CWA, acknowledged the Company's responsibility to understand and comply with applicable safety laws and regulations

On June 6, 2012, Staff completed a routine safety investigation of CWA, which resulted in a proposed "Satisfactory" safety rating. The Company should have known about this requirement.

3. **Whether the Company self-reported the violation.** CWA did not self-report this violation.
4. **Whether the Company was cooperative and responsive.** The Company's driver was cooperative throughout the inspection.
5. **Whether the Company promptly corrected the violation and remedied the impacts.** CWA has not provided Staff with evidence that it corrected the violation.
6. **The number of violations.** Staff identified one violation type with a total of one individual occurrence.
7. **The number of customers affected.** CWA traveled 272,240 miles in 2020. A significant number of customers, as well as members of the traveling public, were potentially affected by this safety violation.
8. **The likelihood of recurrence.** The driver was cooperative throughout the inspection and was provided technical assistance with specific remedies. This is the first documented violation of this type for the Company. Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** CWA has no history of previous penalties for safety violations.
10. **The Company's existing compliance program.** Booth Fowler, Safety Director of CWA, is responsible for the Company's safety compliance program.
11. **The size of the Company.** The Company currently owns 31 commercial motor vehicles and employs 49 drivers. The Company reported \$602,905 in gross revenue for intrastate operations in 2020.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.² The Commission generally will assess penalties by violation category, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

² Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

The Commission has considered these factors and determined that it should penalize CWA \$100, calculated as follows:

- One violation of 49 CFR § 383.23(a)(2) – Operating a CMV without a CDL. The Commission assesses a penalty of \$100 for this out-of-service violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of their decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violation.
- Admit the violation but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective September 23, 2021.

/s/Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT TC-210632

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

- 1. **Payment of penalty.** I admit that the violation occurred and enclose \$100 in payment of the penalty.
- 2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

- 3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class